APPENDIX A

Order of Supreme Court of Florida Dismissing Appeal—February 20, 1967—Unreported

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1967

Monday, February 20, 1967

Case No. 35,644

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCAL 415, et al.,

Appellants,

vs.

SCHERER & SONS, INC., etc., et al.,

Appellees.

Upon consideration of appellee's motion to dismiss appeal, said motion is granted and it is ordered that the appeal be and the same is hereby dismissed.

Appendix A

Opinion of District Court of Appeal— June 28, 1966—188 So. 2d 380

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 1966

Case No. 65-411

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCAL 415, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO; MIAMI JOINT COUNCIL OF THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO; all unincorporated voluntary associations, et al.,

Appellants,

vs.

SCHERER & SONS, INC., a Florida corporation, and the FLORIDA APPAREL MANUFACTURERS' ASSOCIATION, INC., a Florida corporation,

Appellees.

Opinion filed June 28, 1966.

An Appeal from the Circuit Court for Dade County, Hal P. Dekle, Judge.

Kaplan & Shapiro, for appellants.

Marchant, Perkins & Cook; Smith & Mandler, for appellees.

Before HENDRY, C.J., and PEARSON and CARROLL, JJ.

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PER CURIAM.

Scherer & Sons filed a complaint in the circuit court seeking damages against the appellants and an injunction to prevent them from enforcing any contract and entering into and agreeing to any agreement whereby Scherer & Sons is restricted in the full and free pursuit of its business.

This court previously reversed a temporary injunction order in this cause after finding that "because it has been made to fairly appear that the activities complained of constitute an unfair labor practice under the National Labor Relations Act the state jurisdiction must yield."[1] On certiorari, the Supreme Court approved our decision. However, the appellant therein asserted that the collective bargaining agreement collides with Florida's right-to-work amendment. The Supreme Court found that this aspect of the problem was neither urged by the complaint nor supported by the evidence presented on application for temporary injunction. The court did remand to this court with directions to remand to the circuit court for further proceedings to afford the appellant an opportunity to establish the applicability of Florida's right-to-work amendment, indicating that if this situation could be supported, then the Taft-Hartley recognition of permissible state concern in the enforcement of its right-to-work provisions would support state action.[2] The complaint, as amended, after remand was dismissed and we reversed.[3]

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[1] *International Ladies' Gar. Wkrs. U.* v. *Scherer & Sons, Inc.*, Fla. App. 1961, 132 So. 2d 359, 361.

[2] *Scherer & Sons, Inc.* v. *International Ladies Gar. Wkrs. U.*, Fla. 1962, 142 So. 2d 290.

[3] *Scherer & Sons, Inc.* v. *International Ladies' Gar. Wkrs. U.*, Fla. App. 1964, 163 So. 2d 306.

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The cause then proceeded to final hearing. The chancellor entered a final decree in which he found that the equities are with the appellee and:

> "That the Plaintiff has proven the allegations of the complaint, as amended, by and with clear and convincing evidence.
>
> "That the Plaintiff, and his employees, by the acts complained of in the complaint, and the conduct stemming therefrom, have suffered loss of earning in business and as wages and have been irreparably injured.
>
> "That the concerted activities of the Defendants complained of in the complaint, and the amendment thereto, are in violation of the Florida Right to Work Amendment, as is set out in Section 12 of the Declaration of Rights of the Constitution of the State of Florida, in that the acts complained of and the contract which is the subject matter of this suit, constitute both primary and secondary economic pressures by the Defendants upon the Plaintiff for the purpose of compelling the Plaintiff to execute a contract with the Defendant Union(s) and/or to require the Plaintiff's employees to join said Union(s) as a condition of employment, even though none of the Plaintiff's employees are members of said Union(s), or, in the alternative to continue to suffer losses in its business with a likelihood of a cessation thereof, all of the above being within the purview of the law of the case in this cause of action, as is defined and set out in 142 So. 2d 290 and 163 So. 2d 306; see also *Hescom, Inc.* v. *Staley, etc.*, [Fla. App. 1963], 155 So. 2d 3.

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"That the compulsive pressures brought to bear upon the Plaintiff, and its employees, by the Defendants, acting in concert, violate the Right to Work Amendment to the Constitution of the State of Florida, as aforesaid, and are tantamount to the taking of the Plaintiff's property without due process of law."

Based on these findings the chancellor permanently enjoined and restrained the appellants from violating Florida's right-to-work amendment found in § 12, Declaration of Rights, Florida Constitution, F.S.A. including, but not limited to, the enforcement of any agreement requiring the cessation of business with the appellee, Scherer & Sons. The chancellor further restrained all picketing in violation of § 12 above.

Having determined that the evidence supports the findings and that no error has been made to appear, the decree appealed is affirmed.

Affirmed.

Appendix A

Order of Circuit Court Denying Rehearing—April 6, 1965—Unreported

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY

No. 61C-1417 (Dekle)

SCHERER & SONS, INC., a Florida corporation,

Plaintiff,

v.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, Local 415, et al.,

Defendants.

ORDER

THIS CAUSE came on duly for hearing before me, after notice, upon the Defendants' Petition for Rehearing and Motion to Vacate and Set Aside Final Decree. The Court heard arguments, considered memoranda of law submitted and the authorities cited by the respective parties.

Nellie Kitchens, et al. vs. *John Doe, et al.*, (Fla. App. 3, March 16, 1965) — So. 2d — (Opinion filed March 16, 1965, not yet reported) handed down after the entry of this Court's Final Decree of March 12, 1965, is urged by Defendants as decisive of this controversy and requiring

that such Final Decree be set aside, and one entered for Defendants on the basis that the Taft-Hartley Act has preempted, to the exclusive jurisdiction of the National Labor Relations Board, the question(s) here as an unfair labor practice, on the ground that the right to work issue under Section 14(b) of Taft-Hartley begins only with actual negotiation and execution of the type of agreement described in Section 14(b), to-wit: "Agreements requiring membership in a labor organization as a condition of employment" as held in *Retail Clerks* v. *Schermerhorn*, 376 U.S. 96, 11 L. Ed. 2d 179, 84 S. Ct. 219.

It does not appear that the right-to-work question has been presented in just this light in any of the previous cases. *Nellie Kitchens* involves, as plaintiffs, the employees of the Plaintiff here, Scherer & Sons, Inc., and the picketing in question which was solely by members of Defendant Union, not employees of Plaintiff. The holding of the Third District rests squarely on its statement that in the *Nellie Kitchens* case ". . . there was no agreement in existence, nor was there any negotiation in regard thereto, it was simply an attempt *to get the employer to execute a union-security agreement*, . . ." There *is* present in evidence in this cause an agreement, in fact, agreements, which have the effect, under the proofs in evidence, of depriving the employees of this Plaintiff of the choice whether to join a union or not, as preserved in Florida's "right to work" law, which choice is recognized in *Schermerhorn*, supra. These agreements were between the Garment Workers' Union and apparel manufacturers in the Miami area as an Association, which is also a Defendant, and constituted a source of work done by the Plaintiff in the manufacture of belts, buttons and accessories for the

products of such manufacturers, and thus, effectively eliminated work which the employees might do only if they conformed to the requirements of the agreements between the Association of Manufacturers and the Union that such products ". . . shall be made only by *workers* covered by collective bargaining agreements with the Union, the International or affiliates thereof." (Emphasis supplied) The agreements then continued: "In case a member of the Association shall have this work done by a non-Union shop, then, upon notification by the Union of this fact, the Employer shall discontinue to give out such work to such non-Union shop or shops." (Par. 6, p. 3, of Agreement, Pltf's. Ex. 4) Such provision expressly affects the "workers" or employees of the Plaintiff and, in effect, required that they belong to a union or no work would be received in the shop in which they worked and thus they were denied the right preserved by the Florida "right to work" law. The effectiveness of the agreement is demonstrated by the fact that this business quite literally became a "closed shop", without business and the employees without work.

This situation is referred to in the opinion of Justice Thornal in the prior appeal in this cause, *Scherer & Sons, Inc. v. International Ladies' Garment Workers' Union, et al.*, (Fla. 1962) 142 So. 2d 290, where he stated, at page 295:

> "It (plaintiff-employer) could be confronted by a situation where the only alternative to preserving itself against irreparable harm would be a compulsion to require its employees to join a union as a condition of employment. Such compulsive pressures would then squarely present the Florida "right to work" issue. Certainly, if this situation

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> could be supported by evidence upon a remand, then the Taft-Hartley recognition of permissible state concern in the enforcement of its right to work provisions would support state action . . ."

The evidence in this cause certainly supports this situation.

Thus, it is seen that in the present case there *is* such an agreement referred to in the *Nellie Kitchens* case which distinguishes it and supports state action under the "right to work" law, consistent with the language of Mr. Justice Douglas in *Retail Clerks* v. *Schermerhorn,* supra, which is quoted in the Nellie Kitchens opinion, distinguishing picketing in order to *get* an employer to execute an agreement and one where an agreement is in existence. It is true that the agreement here referred to is not directly between this employer and the Union, but it need not be where the agreements that have been executed have the sam effect indirectly precluding the right of choice of Plaintiff's employees with regard to joining a union or not. This accomplished dilemma is set forth in Justice Thornel's earlier quoted language. To require, as a prerequisite to state action, the perfunctory execution of a union contract between this employer and this Union would be an idle and repetitious act. The result here is the same. The Union may be said to be doing indirectly that which the right to work law prohibits doing directly by such a "direct" agreement. It is very plain, from all of the foregoing, that these employees, by the Union's action and/or picketing, are being and/or would be compelled against their will to join a union in violation of the right to work issue. It is either that or no work.

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There is no specification as to between whom the agreements requiring membership in 14(b) of Taft-Hartley must be executed. Of concern to the Court is the effect of these upon the employees involved, and this effect is clear.

Accordingly, Defendants' Petition for Rehearing and Motion to Vacate and Set Aside Final Decree are denied and the Final Decree entered herein on March 12, 1965 is affirmed in all respects.

DONE and ORDERED at Miami, Dade County, Florida, this 6 day of April, 1965.

HAL P. DEKLE
Circuit Judge

Appendix A

Final Decree of Circuit Court—March 12, 1965—Unreported

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 61C-1417 (Dekle)

SCHERER & SONS, INC., a Florida corporation,

Plaintiff,

v.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, Local 415, et al.,

Defendants.

FINAL DECREE

The above cause came on for final hearing on Thursday, March 11, 1965, and the Court having heard the testimony, and being otherwise fully advised in the premises, finds:

1. That the equities in this cause are with the Plaintiff and against the Defendants, International Ladies' Garment Workers' Union, Local 415; International Ladies' Garment Workers' Union, AFL-CIO; Miami Joint Council of the International Ladies' Garment Workers' Union, AFL-CIO; all unincorporated voluntary associations; James Belluso, individually and as Business Agent of said International, and/or Local 415, and/or said Miami Joint Council; Harry Metz, individually and as Business Agent of said International and/or said Local 415, and/or said Miami Joint Council; Robert Gladnick, individually

and as Manager of said International and/or said Local 415, and/or said Miami Joint Council; and the Florida Apparel Manufacturers' Association, Inc., a Florida corporation.

2. That the Plaintiff has proven the allegations of the complaint, as amended, by and with clear and convincing evidence.

3. That the Plaintiff, and his employees, by the acts complained of in the complaint, and the conduct stemming therefrom, have suffered loss of earning in business and as wages and have been irreparably injured.

4. That the concerted activities of the Defendants complained of in the complaint, and the amendment thereto, are in violation of the Florida Right to Work Amendment, as is set out in Section 12 of the Declaration of Rights of the Constitution of the State of Florida, in that the acts complained of and the contract which is the subject matter of this suit, constitute both primary and secondary economic pressures by the Defendants upon the Plaintiff for the purpose of compelling the Plaintiff to execute a contract with the Defendant Union(s) and/or to require the Plaintiff's employees to join said Union(s) as a condition of employment, even though none of the Plaintiff's employees are members of said Union(s), or, in the alternative, to continue to suffer losses in its business with a likelihood of a cessation thereof, all of the above being within the purview of the law of the case in this cause of action, as is defined and set out in 142 So. 2d 290 and 163 So. 2d 306; see also *Hescom, Inc.* v. *Stalvey, etc.*, 155 So. 2d 3.

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5. That the compulsive pressures brought to bear upon the Plaintiff, and (sic) its employees, by the Defendants, acting in concert, violate the Right to Work Amendment to the Constitution of the State of Florida, as aforesaid, and are tantamount to the taking of the Plaintiff's property without due process of law.

It is thereupon CONSIDERED, ADJUDGED, DECREED and ORDERED as follows:

1. That the Defendants, International Ladies' Garment Workers' Union, Local 415; International Ladies' Garment Workers' Union, AFL-CIO; Miami Joint Council of the International Ladies' Garment Workers' Union, AFL-CIO; all unincorporated voluntary associations; James Belluso, individually and as Business Agent of said International and/or said Local 415, and/or Miami Joint Council; Harry Metz, individually and as Business Agent of said International and/or said Local 415, and/or said Miami Joint Council; Robert Gladnick, individually and as Manager of said International and/or said Local 415, and/or said Miami Joint Council; and the Florida Apparel Manufacturers' Association, Inc., a Florida corporation, be, and they are hereby permanently enjoined and restrained from, in any manner, violating the Florida Right to Work Law(s), that is to say the provisions of Section 12 of the Declaration of Rights of the Florida Constitution appertaining thereto, including, but not limited to, the enforcement of any agreement, written, oral or otherwise, restraining or attempting to restrain the Plaintiff in its pursuit of business and its production, sale, use or consumption of merchandise, or from, in any manner enforcing an agreement, written, oral or otherwise, between the Defendants and other customers of the Plain-

tiff which requires the cessation of, or failure to do business with the Plaintiff.

2. That the Defendants, and each of them, be and they are hereby restrained from any and all picketing in violation of the provisions of the above and foregoing paragraph one (1) and/or in any violation of the provisions of Section 12 of the Declaration of Rights of the Constitution of the State of Florida pertaining to said Right to Work Law.

3. That the costs in this cause are taxed against the Defendants.

4. That the Court retains jurisdiction of this cause for the purposes of entering such further and other orders as it may deem meet and proper to enforce the provisions of this final decree and effect the purposes thereof.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this 12th day of March, 1965.

HAL P. DEKLE.
Circuit Court Judge

Appendix A

Opinion of District Court of Appeal—April 14, 1964—163 So. 2d 306

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 1964

CASE NO. 63–760

SCHERER & SONS, INC., a Florida corporation,

Appellant,

vs.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCAL 415; INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO: MIAMI JOINT COUNCIL of the INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO: all unincorporated voluntary associations; JAMES BELLUSO, individually and as Business Agent of said International, and/or said Local 415, and/or said Miami Joint Council; HARRY METZ, individually and as Business Agent of said International and/or said Local 415, and/or said Miami Joint Council; ROBERT GLADNICK, individually and as Manager of said International and/or said Local 415, and/or said Miami Joint Council; and the FLORIDA APPAREL MANUFACTURERS' ASSOCIATION, INC., a Florida corporation,

Appellees.

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Opinion of District Court of Appeal—April 14, 1964—163 So. 2d 306

Opinion filed April 14, 1964.

An Appeal from the Circuit Court for Dade County, Hal P. Dekle, Judge.

Marchant, Perkins, Cook & Schenerlein, for appellant.

Orr & Kaplan; Robert Cohn (Atlanta, Georgia); Harry B. Smith, for appellees.

Before BARKDULL, C. J., and CARROLL and HENDRY, JJ.

PER CURIAM.

Plaintiff appeals the dismissal of its amended complaint. The plaintiff filed its original complaint seeking injunctive relief against defendants-appellees for an alleged violation of the statute prohibiting agreements in restraint of trade resulting in injury to appellant. The trial court entered a temporary injunction order from which an appeal was taken to this court by the appellees. This court reversed the order appealed, and thereafter certified the question to the Supreme Court of Florida. The Supreme Court discharged the writ of certiorari and remanded the cause to this court for issuance of a mandate consistent with the Supreme Court's opinion which held:[1]

> ". . . [W]e feel that upon remand the appellant should be accorded an opportunity to establish by evidence the applicability of Florida's right-to-work amendment if it so desires and is in a position to do so."

This court filed an opinion in which it withdrew its earlier mandate, and amended its judgment and decision

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[1] *Scherer & Sons, Inc.* v. *International Ladies' G. Wkrs.*, Fla. 1962, 142 So. 2d 290, 295.

by adding thereto . . . "and the case is remanded to the circuit court for further proceedings in that court not inconsistent with its opinion and the opinion of the Supreme Court of Florida."[2]

Appellant filed an amended complaint as allowed, which appellees moved to dismiss. After argument the trial court dismissed the complaint, as amended, with prejudice.

The question for our determination is whether the trial court erred in failing to adhere to the decision of the Supreme Court of Florida in this case by dismissing the amended complaint. We hold that such dismissal was error.

The ruling of the Supreme Court became the "law of the case"[3] and the Circuit Court's dismissal of the complaint without affording appellant "an opportunity to establish by evidence" the allegations in the amended complaint was error.

We therefore reverse the order appealed and remand the cause for proceedings consistent herewith.

Reversed and remanded.

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[2] *International Ladies' G. Wkrs. U.* v. *Scherer & Sons, Inc.*, Fla. App. 1962, 146 So. 2d 137.

[3] *McGregor* v. *Provident Trust Co. of Philadelphia*, 119 Fla. 718, 162 So. 323; *City of Miami Beach* v. *Parking Facilities, Inc.*, Fla. App. 1960, 120 So. 2d 209; *Leybourne* v. *Furlong*, Fla. App. 1964, 161 So. 2d 221.

Appendix A

Opinion of Supreme Court of Florida—May 9, 1962—142 So. 2d 290

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1962

CASE NO. 31,484

SCHERER & SONS, INC., a Florida corporation,

Petitioner,

vs.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCAL 415; INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO: MIAMI JOINT COUNCIL of the INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO: all unincorporated voluntary associations; JAMES BELLUSO, individually and as Business Agent of said International, and/or said Local 415, and/or said Miami Joint Council; HARRY METZ, individually and as Business Agent of said International and/or said Local, and/or said Miami Joint Council; ROBERT GLADNICK, individually and as Manager of said International, and/or said Local 415, and/or said Miami Joint Council; and the FLORIDA APPAREL MANUFACTURERES' ASSOCIATION, INC., a Florida corporation,

Respondents.

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Opinion of Supreme Court of Florida—May 9, 1962—
142 So. 2d 290

Opinion filed May 9, 1962

Writ of Certiorari to the District Court of Appeal, Third District

Marchant, Perkins, Cook & Schenerlein, for Petitioner

Orr & Lazar and Robert Cohn (Atlanta, Georgia) for International Ladies' Garment Workers' Union, Local 415, et al and Harry B. Smith for Florida Apparel Manufacturers' Association, Inc., Respondents

THORNAL, J.

By a petition for a writ of certiorari we have for review a decision of a District Court of Appeal certified to us by that court as involving a question of great public interest.

We must determine whether, under the circumstances presented, state injunctive relief against a contract allegedly violative of Section 542.05, Florida Statutes, is precluded by the provisions of the Labor Management Relations Act, 1947, under the doctrine of preemption.

The decision which we have under review is *International Ladies' Garment Workers' Union, et al.* v. *Scherer and Sons, Inc.*, 132 So. 2d 359. Inasmuch as the matter is certified to us by the District Court of Appeal we may explore the entire record in arriving at our conclusion. Article V, Section 4, Florida Constitution; *Susco Car Rental System of Florida* v. *Leonard*, 112 So. 2d 832; *Carraway* v. *Revell*, 116 So. 2d 16.

The respondent International Ladies' Garment Workers' Union, Local 415, hereafter referred to as the Union, entered into a collective bargaining agreement with the respondent Florida Apparel Manufacturers' Association.

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Opinion of Supreme Court of Florida—May 9, 1962—
142 So. 2d 290

The agreement, which was dated October 25, 1960, contained the following provisions:

> "Belts, covered buttons, buckles, neckwear, artificial flowers, embroideries, hemstitching, pleating and tucking on garments, etc., which are caused by members of the Association to be manufactured for them shall be made only by workers covered by collective bargaining agreements with the Union, the International, or affiliates thereof. In case a member of the Association shall have this work done by a non-Union shop, then, upon notification by the Union of this fact, the employer shall discontinue to give out such work to such non-Union shop or shops."

The membership of the Manufacturers' Association consists of thirty-six manufacturers of ladies' garments in the greater Miami area. Petitioner Scherer is engaged primarily in the business of manufacturing belts and accessories for such garments in the same area. For a number of years prior to the agreement in question members of the Manufacturers' Association had been customers of Scherer. Because of the provisions of the collective bargaining agreement, which we have quoted, these members of the Manufacturers' Association thereafter refused to do business with Scherer. They based their refusal upon the prohibitions of the Collective Bargaining Agreement executed with the respondent Union. Scherer operates a non-union shop. Contending that the agreement constituted an unlawful restraint of trade, violative of Section 542.05, Florida Statutes, Scherer requested and obtained a temporary injunction against the continued enforcement of the agreement. It alleged and the District Court found that it proved that irreparable injury resulted from the

agreement. The District Court of Appeal reversed the award of the injunction. It held in substance that the contract between the Union and Manufacturers' Association was arguably subject to condemnation as an unfair labor practice. It concluded that any state action thereon had been preempted by federal statutes even though the contract constituted a violation of the Florida Statute which prohibits such arrangements in restraint of trade. It is this decision which we must now consider.

Section 542.05, Florida Statutes, invalidates combinations in restraint of trade defined as follows, to wit:

> "Any person who shall or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons or of either two or more of them, for either, any or all of the following purposes,
>
> "(1) To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state;
>
> "(2) To increase or reduce the price of merchandise, produce or commodities;
>
> "(3) To prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce, or commodities, or to prevent competition in aids to commerce;
>
> "(4) To fix at any standard or fixture whereby its price to the public shall be in any manner controlled or established any article or commodity of

> "merchandise, produce, or commerce intended for sale, use, or consumption in this state; or . . ."

The complaint for the temporary injunction was grounded entirely upon the alleged violation of the Florida Statute. The injunction was granted entirely on the theory that the statute had been violated. The Union defended against the injunction and obtained reversal in the District Court with the contention that the Federal Government had preempted the field of labor relations by the enactment of the Labor Management Relations Act, 1947, commonly known as the Taft-Hartley Act, Title 29 U.S.C.A. Sections 141 et seq. In particular, it was contended that the collective bargaining agreement entered into between the Manufacturers' Association and Union was at least arguably subject to condemnation as an unfair labor practice. Hence, it was asserted that the initial determination regarding the validity of the agreement rested with the National Labor Relations Board, rather than with the state courts. The pertinent provision of the Taft-Hartley Act, 29 U.S.C.A. Section 158(e), reads in part as follows:

> "(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible [sic] and void: . . . Provided

further, That for the purposes of this subsection and subsection (b)(4)(B) of this section the terms 'any employer', 'any person engaged in commerce or an industry affecting commerce', and 'any person' when used in relation to the terms 'any other producer, processor, or manufacturer', 'any other employer', or 'any other person' shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: Provided further, That nothing in this subchapter shall prohibit the enforcement of any agreement which is within the foregoing exception."

The Union likewise contended that the collective bargaining agreement was at least arguably subject to the federal prohibitions against secondary boycotts contained in 29 U.S.C.A., Section 158 (b)(4)(ii)(B). The problem which we must resolve requires a decision as to whether the subject arrangement between the Union and the Manufacturers' Association is within the comprehension of the Taft-Hartley Act as a problem for initial consideration by the National Labor Relations Board. Otherwise stated, the Union here asserts that regardless of state legislation on the subject the power to regulate this particular type of contract has been preempted by the Congress.

Admittedly, many aspects of control of labor relations have been left to the states. It must be conceded, however, that where a given situation is "arguably subject" to the prohibitions or protections of the Taft-Hartley Act, the federal government has preempted state action, at

least to the extent of conveying to the National Labor Relations Board the initial jurisdiction to determine the applicability of the federal law.

We do not overlook the contention of petitioner Scherer to the effect that it is here seeking the protections of Florida's statute prohibiting restraints of trade independently of the federal statute. However, it is clear that in the area of labor relations, where an Act of Congress sufficiently expresses the purpose of subjecting a given situation to federal supervision thereby excluding initial state control, then any state regulation must give precedence to federal jurisdiction. This is so even though the matter which has been subjected to federal labor regulations might also be included in a related state concern evidenced by its restraint of trade statutes. *Weber* v. *Anheuser-Busch Inc.*, 348 U.S. 468, 75 S. Ct. 480, 99 L. ed. 546. Certain general principles have evolved in the decisions dealing with this subject. Among these are the following:

1. A state may not prohibit the exercise of rights which the Taft-Hartley Act protects.

2. A state may not assert its injunctive processes against "an unfair labor practice" defined by federal statutes.

3. A state may enforce its injunctive processes against conduct of a union which is neither protected nor prohibited by federal labor statutes.

Illustrative of the third category is mass picketing or picketing which creates a breach of the peace. If a given situation may reasonably be classified in the first and second categories then state jurisdiction must accede to the agency which Congress has selected for the initial deter-

mination of the issues. *Weber* v. *Anheuser-Busch,* supra; *Garner* v. *Teamsters, C. & H. Union,* 346 U.S. 485, 74 S. Ct. 161, 98 L. Ed. 228; *Local 24 of I.B. of T., C., W. & H.* v. *Oliver,* 358 U.S. 283, 79 S. Ct. 297, 3 L. Ed. 2d 312.

The District Court correctly concluded that the factual situation reflected by the instant complaint was arguably subject to the jurisdiction of National Labor Relations Board under Title 29 U.S.C.A., Section 158(e) which we have quoted above. This is so because conceivably the collective bargaining agreement between the Union and the Manufacturers' Association could be construed as an unfair labor practice or conversely as a protected arrangement under the "garment industry proviso" likewise announced in the same statutory provision. At least under the Taft-Hartley Act, the National Labor Relations Board would be the appropriate forum to determine initially the presence or absence of federal jurisdiction.

In the event that the National Labor Relations Board should disclaim jurisdiction, then under recent amendments to the Taft-Hartley Act, the state courts would be free to proceed. Title 29, U.S.C.A. Section 401 et seq, otherwise known as the Labor Management Reporting and Disclosures Act of 1959. See also Vanderbilt Law Review, Vol. 13, No. 1, page 416, December 1959. Congress has likewies recently provided an expeditious procedure for obtaining prompt advisory opinions of the National Labor Relations Board regarding its jurisdiction in a particular situation. 29 U.S.C.A. App. Section 101.39, et seq.

Appellant relies strongly on *United Construction Workers* v. *Laburnum,* 347 U.S. 656, 74 S. Ct. 833, 98 L. Ed. 1025, where the Supreme Court of the United States affirmed state court action in allowing damages for a common law tort resulting from Union action which threat-

ened violence incident to demands for a union shop. The decision turned on the proposition that the subject action was neither prohibited nor protected by the Taft-Hartley Act. It was subsequently construed to permit recovery for damages only as a result of conduct which otherwise would have been the subject of a state court injunction. This was the construction placed upon Laburnum in *San Diego Bldg., Trades Council* v. *Garmon*, 359 U.S. 236, 79 S. Ct. 773, 3 L. Ed. 2d 775. By Garmon it appears that the Supreme Court of the United States has limited the recovery of damages in state courts to those situations wihch would be subject to the states injunctive processes such as violent picketing.

Appellant also relies upon *International Union* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, 69 S. Ct. 516, 93 L. Ed. 651, and, *Algoma Plywood and Veneer Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301, 93 L. Ed. 691, 69 S. Ct. 584. In these cases, however, the state's injunctive processes were permitted against situations which were neither prohibited nor protected by the Taft-Hartley Act.

In its brief here appellant also asserts that the collective bargaining agreement collides with Florida's so-called "right to work amendment" found in Section 12, Declaration of Rights, Florida Constitution. This provision of the Florida organic law reads as follows:

> "The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

It is then contended that state jurisdiction is preserved by 29 U.S.C.A. Section 164 (b) which reads as follows:

> "Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

Unfortunately for the appellant this aspect of the problem was neither urged by the complaint nor supported by the evidence presented to the chancellor on the application for the temporary injunction. Although the point was raised by a petition for rehearing in the District Court, it was not argued in the briefs nor supported by the record presented to that court.

Conceivably, the secondary economic pressures exerted upon appellant by the disputed provision in the collective bargaining agreement could force appellant into a dilemma which would be tantamount to a taking of its property without due process. It could be confronted by a situation where the only alternative to preserving itself against irreparable harm would be the compulsion to require its employees to join a union as a condition to employment. Such compulsive pressures would then squarely present the Florida "right to work" issue. Certainly, if this situation could be supported by evidence upon a remand, then the Taft-Hartley recognition of permissible state concern in the enforcement of its right-to-work provisions would support state action. In the area of protecting state policy under right-to-work provisions the Congress has expressly ceded initial jurisdiction to the states. Since

the matter was before the chancellor only upon an application for a temporary restraining order based upon the Florida restraint of trade statute, we feel that upon remand the appellant should be accorded an opportunity to establish by evidence the applicability of Florida's right-to-work amendment if it so desires and is in a position to do so. We, therefore, hold that when this cause is remanded to the chancellor it should be without prejudice to any rights of appellant in this regard.

We might interpolate that in this broad area of labor relations, unless state jurisdiction is clear, time, effort and money could be conserved by initially employing the expeditious procedure which the Congress has now established to obtain a preliminary determination of jurisdiction by the National Labor Relations Board. Subject to the privileges extended to appellant with reference to Florida's right-to-work amendment we hold that the decision of the Court of Appeal must be approved. We discharge the writ of certiorari but remand the cause to the District Court with directions to remand the same to the Circuit Court for further proceedings not inconsistent with this opinion.

It is so ordered.

ROBERTS, C.J., THOMAS, DREW, O'CONNELL and HOBSON (Ret.), JJ., and PARKS (Ret.), Circuit Judge, concur.

Appendix A

Opinion of District Court of Appeal— August 3, 1961—132 So. 2d 359

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1961

CASE NO. 61-147

INTERNATIONAL LADIES' GARMENT WORKERS UNION, et al.,

Appellants,

vs.

SCHERER & SONS, INC., a Florida corporation,

Appellee.

Opinion filed August 3, 1961.

An Interlocutory Appeal from the Circuit Court for Dade County, Hal P. Dekle, Judge.

Orr & Lazar and Richard Yale Feder, for appellants.

Marchant, Perkins, Cook & Schenerlein, for appellee.

Before PEARSON, CJ., and HORTON and CARROLL, JJ.

PER CURIAM.

The International Ladies' Garment Workers Union and The Miami Joint Council of International Ladies' Garment Workers Union, together with the Florida Apparel Manufacturer's Association, Inc., are defendants in the circuit court to a complaint by Scherer & Sons, Inc., a Florida corporation, wherein the plaintiff prays for damages against the defendants and an injunction to prevent the

defendants from enforcing any contract and entering into and agreeing to any agreement whereby the plaintiff is restricted in the full and free pursuit of its business. Scherer & Sons, Inc., identify themselves as a manufacturer of belts and accessories, contracted for and sold to dress manufacturers in the garment industry in Miami. The complaint alleged that the unions mentioned had entered into a contract with the Florida Apparel Manufacturer's Association, Inc. whereby the plaintiff, a non-union organization, was precluded from participating in business with the members of the apparel manufacturers association.

After notice and hearing, the chancellor entered a temporary injunction whereby the defendants were enjoined from enforcing any agreement: "restraining or attempting to restrain the plaintiff in its pursuit of business and its production, sale, use or consumption of merchandise or in any manner enforcing an agreement between the defendants and other customers of the plaintiff which requires the cessation of or failure to do business with the plaintiff." The basis of this temporary restraining order was that defendants' actions in attempting to enforce a contract between the unions and the apparel manufacturers whereby the apparel manufacturers would not purchase from any suppliers except union shops, was a restraint of trade and in violation of Section 542.05, Fla. Stat., F.S.A. Chapter 542, Fla. Stat., F.S.A., is entitled "Combinations Restricting Trade or Commerce."

The defendants have prosecuted this interlocutory appeal and we reverse, upon the ground that the conduct complained of presents a question of whether an unfair labor practice was committed and, as such, the decision thereon has been pre-empted by statutes of the United

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States. There is no doubt but that the activity of the defendants, alleged in the complaint, and of which prima facie proof was made upon hearing, constitutes a violation of Florida Law. Nevertheless, it is our view that the particular activity of the defendants here complained of is within the area where Congress has seen fit to establish exclusive federal jurisdiction by Title 29, § 158(b) (4) (ii) (B), U.S.C.A. This is a section of the Taft-Hartley Act as amended in 1959. It is also our view that the specific activity here complained of is regulated further by an amendment which appears as Title 29, § 158(e), U.S.C.A. Appellee urges that the last mentioned section is relieved of its effect by an exemption contained in said section which excerpts from the operation thereof, "persons in the relation of a jobber, manufacturer, contractor or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of the integrated process of production in the apparel and clothing industry."

An examination of the pleadings and the evidence in this case reveals no ground for the application of the exception to the activity of which complaint is made, and it is not necessary for us to determine the effect of said exception if applicable. Because it has been made to fairly appear that the activities complained of constitute an unfair labor practice under the National Labor Relations Act the state jurisdiction must yield.[1]

Therefore, the temporary injunctive order appealed is reversed.

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[1] "When it is clear or may fairly be assumed that the activities which a State purports to regulate * * * constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield." *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236, 3 L. ed. 2d 775, 79 S. Ct. 773.

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Kitchens Case Opinion of Supreme Court of Florida—November 9, 1966—194 So. 2d 258

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1966

CASE NO. 34,314

NELLIE KITCHENS, et al.,

Appellants,

vs.

JOHN DOE, et al.,

Appellees.

Opinion filed November 9, 1966

An Appeal from the District Court of Appeal, Third District

Joseph A. Perkins, for Appellants

Kaplan & Shapiro, for Appellees

PER CURIAM.

This appeal reflected apparent jurisdiction and the case was heard on oral argument of the parties. After hearing argument and upon further considering the matter, we have determined the appeal does not lie because we lack jurisdiction to consider it pursuant to Article V, Section 4, Florida Constitution. Therefore it is ordered this appeal be dismissed.

THORNAL, C.J., THOMAS, DREW and ERVIN, JJ., concur

ROBERTS, J., dissents with Opinion

O'CONNELL and CALDWELL, JJ., dissent

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Kitchens Case Opinion of Supreme Court of Florida—November 9, 1966—194 So. 2d 258

ROBERTS, J., dissenting:

On direct appeal we here review a decision by the District Court of Appeal, Third District, affirming a judgment of the lower court which had dismissed a suit by the plaintiff-employees who were seeking protection for their right to work without joining a union, under Section 12, Declaration of Rights, Florida Constitution, popularly referred to as the "Florida Right to Work Law".

The factual background, history and disposition are clearly set forth in the opinion by the District Court reported at 172 So. 2d 896, and it would serve no useful purpose to repeat them here.

We have jurisdiction because the District Court of Appeal initially construed a controlling provision of the Constitution of Florida. Compare *Harrell's Candy Kitchen, Inc.* v. *Sarasota-Manatee Airport Authority,* 111 So. 2d 439.

The District Court held that the exclusive jurisdiction over the subject controversy had been reserved to the National Labor Relations Board citing *Retail Clerks Intern. Ass'n, etc.* v. *Schermerhorn,* 375 U.S. 96, 84 S. Ct. 219, 11 L. Ed. 2d 179, and lifted from that opinion the following language of Mr. Justice Douglas:—

> "On the other hand, picketing in order to get an employer to execute an agreement to hire all-union labor in violation of a state union-security statute lies exclusively in the federal domain [citations omitted] because state power, recognized by § 14(b), begins *only with actual negotiation and execution of the type of agreement described by § 14(b).* Ab-

sent such an agreement, conduct arguably an unfair labor practice would be a matter for the National Labor Relations Board under Garmon." 375 U. S. at 105; 84 S. Ct. at 223.

In *Hescom, Inc.* v. *Stalvey,* Fla. App. 1963, 155 So. 2d 3, the District Court of Appeal, First District, had announced a ruling on comparable facts that the non-union employees would be entitled to protection in the Florida courts, under our Right to Work Law. The District Court of Appeal, Third District, in its opinion here under review, held the *Hescom* case to be overruled by the *Schermerhorn* case.

Section 14(b) of the Taft-Hartley Act, appearing as 29 U.S.C.A. § 164(b), provides:

> "Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

The language above quoted by Mr. Justice Douglas and which was only a small part of the dictum in the *Schermerhorn* case, when read out of context with the entire opinion, might appear to support the ruling by the Third District Court in this case, but frankness compels me to say that I fail to see any logic in the contended pronouncement that there is a difference as to the forum for the enforcement of the Florida Right to Work Law, depending upon whether or not the non-union laborers are working with an agreement. In fact, I fail to glean from the record satisfactory evidence as to whether the non-

union employees do or do not have an employment agreement.

Section 12, Declaration of Rights, Florida Constitution, provides inter alia that:

> "* * *. The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

I have again read and considered the entire text of the *Schermerhorn* case, and it is my view that the above quoted language by Mr. Justice Douglas was not necessary to a decision of the matter pending before the Supreme Court of the United States and was merely a side thought—"on the other hand" etc.—and amounted to obiter dicta and as such is not binding on this court.

In the *Schermerhorn* case the Supreme Court of the United States said:

> "As already noted, under § 8(a)(3) a union-security agreement is permissible, for example, if the union represents the employees as provided in § 9(a) (subject to rescission of the authority to make the agreement as provided in § 8(a)(3)). Those are federal standards entrusted by Congress to the Labor Board. Yet even if the union-security agreement clears all federal hurdles, the States by reason of § 14(b) have the final say and may outlaw it. *There is thus conflict between state and federal law; but it is a conflict sanctioned by Con-*

gress with directions to give the right of way to state laws barring the execution and enforcement of union-security agreements. It is argued that if there is a violation of a state union-security law authorized by § 14(b), it is a federal unfair labor practice and that the federal remedy is the exclusive one. It is urged that that course is necessary if uniformity is to be achieved. But § 14(b) gives the States power to outlaw even a union-security agreement that passes muster by federal standards. Where Congress gives state policy that degree of overriding authority, we are reluctant to conclude that it is nonetheless enforceable by the federal agency in Washington." (Underscoring supplied.)

A contrary view or the view announced by the District Court of Appeal, Third District, would render sterile the Right to Work Law in Florida and would result in an odd situation where, by the decision of the United States Supreme Court and an Act of Congress, Florida has the right to have a Right to Work Law, but would not have the jurisdiction to protect persons claiming the right to work thereunder.

For the reasons stated I would quash the decision of the District Court of Appeal, Third District, with instructions to return the cause to the trial court with directions to proceed in a manner not inconsistent with this opinion.

I therefore respectfully dissent.

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Kitchens Case Opinion of District Court of Appeal—March 16, 1965—172 So. 2d 896

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 1965

CASE NO. 64-523

NELLIE KITCHENS, et al.,

Appellants,

vs.

JOHN DOE, RICHARD ROE and THOMAS DOE, holding themselves out as constituting the International Ladies' Garment Workers' Union, Local 415, AFL-CIO, JAMES BELLUSO, individually and as acting manager and/or secretary and/or treasurer of Miami Joint Council, International Ladies' Garment Workers' Union, AFL-CIO, and/or business agent and organizer of Local 415; and HARRY METZ, individually, as business agent and/or organizer of the International Ladies' Garment Workers' Union, and Local 415 thereof, all unincorporated voluntary associations,

Appellees.

Opinion filed March 16, 1965.

An Appeal from the Circuit Court for Dade County, Francis J. Christie, Judge.

Marchant, Perkins, Cook & Schenerlein, for appellants.
Kaplan & Shapiro, for appellees.

Before BARKDULL, C.J., and TILLMAN PEARSON and HENDRY, JJ.

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HENDRY, Judge.

The plaintiffs appeal from the summary final judgment granted to the defendant by the trial court.

The plaintiffs are most of the employees of Scherer & Sons, Inc., a Miami manufacturer of belts, buttons and accessories in the garment industry.[1] Defendants are various officials of Local 415 of the International Ladies' Garments Workers' Union.

The salient paragraph of the complaint charged the union with picketing the plaintiff's employer for the purpose of coercing them to join the union, which would be in violation of their rights under the Declaration of Rights to the Constitution of the State of Florida, Section 12, popularly known as the "right to work" law. In other words, the basis of the complaint was that the activity of the labor union was directed toward establishing a union-security agreement wherein the union would represent these plaintiffs, who had no desire to join the union. At the time of the filing of the complaint, a temporary injunction was granted which prohibited the union from picketing.

Both parties moved for a summary judgment, and the trial court granted defendant-union's motion for summary judgment as well as dissolving the temporary injunction against picketing.

The appellant asserts error on the part of the trial court in granting the defendant's motion based on the assumption that the trial court had no jurisdiction to act in this instance. The trial court evidently based its decision on the conclusion that this activity came within the proscription of the Taft-Hartley Act (29 U.S.C.), and

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[1] All of these employees are non-union.

therefore preempted the state court from consideration of the matter.

Appellant urges that this proposition is erroneous and cites in support thereof the Florida Supreme Court case of *Scherer & Sons, Inc.* v. *International Ladies' G. Wkrs.*, Fla. 1962, 142 So. 2d 290 wherein the court said:

> "Such compulsive pressures would then squarely present the Florida 'right to work' issue. Certainly, if this situation could be supported by evidence upon a remand, then the Taft-Hartley recognition of permissible state concern in the enforcement of its right-to-work provisions would support state action. In the area of protecting state policy under right-to-work provisions the Congress has expressly ceded initial jurisdiction to the states." 142 So. 2d at 295.

This decision by the Florida Supreme Court was based upon 29 U.S.C.A. § 165(b) which provides:

> "(b) Nothing in this sub-chapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

This section, which is popularly known as § 14(b) of the Taft-Hartley Act has been subsequently passed upon by the U. S. Supreme Court on the question of state-federal jurisdiction in this area.

In *Retail Clerks* v. *Schermerhorn*, 375 U.S. 95 (1963), the Supreme Court was determining the question of

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"'whether the Florida courts, rather than solely the National Labor Relations Board, are tribunals with jurisdiction to enforce the state's prohibition' against an 'agency shop' clause in a collective bargaining agreement."[2] The Court clearly set out the area of the respective authorities, when Mr. Justice Douglas wrote:

> "On the other hand, picketing in order to get an employer to execute an agreement to hire all-union labor in violation of a state union-security statute lies exclusively in the federal domain, [citations omitted] because state power, recognized by § 14(b), begins *only with actual negotiation and execution of the type of agreement described by § 14(b).* Absent such an agreement, conduct arguably an unfair labor practice would be a matter for the National Labor Relations Board under Garmon[3] 375 U.S. at 105.

In applying the law of the land as promulgated by the U. S. Supreme Court in Schermerhorn, supra, to the facts of the instant case, we reach the result that the trial court correctly granted the defendant's motion for summary judgment.

In the Schermerhorn case the U. S. Supreme Court affirmed the Florida Supreme Court's ruling that the state court had authority where the agreement had *already been executed or negotiated.* In the present case, there was no agreement in existence nor was there any nego-

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[2] 375 U.S. at 97.

[3] *San Diego Council* v. *Garmon,* 359 U.S. 236 (1959).

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tiation in regard thereto, it was simply an attempt to *get the employer to execute a union-security agreement,* and such activity was specifically reserved to the N.L.R.B. by the language of the Schermerhorn case. In Schermerhorn there was such an agreement already in existence and here there was simply an attempt to procure one. Therefore, the activity here involved was solely within the jurisdiction of the N.L.R.B., and the trial court correctly ruled.

The first district case of *Hescom* v. *Stalvey,* Fla. App. 1963, 155 So. 2d 3, decided on substantially similar facts to this one, must be deemed overruled by the later Schermerhorn case which reached a different result and specifically said that such activity was witihin the sole jurisdiction of the N.L.R.B.

In view of the above, the judgment appealed is affirmed.

Affirmed.

APPENDIX B

The pertinent provisions of the National Labor Relations Act (61 Stat. 136, as amended, 29 U.S.C. 151, *et seq.*) are as follows:

* * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8 (e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

* * * *

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: Provided, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: Provided further, That for the purposes of this subsec-

tion (e) and section 8 (b) (4) (B) the terms "any employer", "any person engaged in commerce or an industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: Provided further, That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception.

* * * *

Section 14. * * *

(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

The pertinent provision of Section 12, Declaration of Rights, Florida Constitution, is as follows:

> The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer.

Appendix B

The pertinent provision of Article 5, Section 4, Florida Constitution, is as follows:

> Appeals from district courts of appeal may be taken to the supreme court, as a matter of right, only from decisions initially passing upon the validity of a state statute or a federal statute or treaty, or initially construing a controlling provision of the Florida or federal constitution. The supreme court may review by certiorari any decision of a district court of appeal that affects a class of constitutional or state officers, or that passes upon a question certified by the district court of appeal to be of great public interest, or that is in direct conflict with a decision of another district court of appeal or of the supreme court on the same point of law, and may issue writs of certiorari to commissions established by law.